

### **REMARKS/ARGUMENTS**

This Amendment is in response to the Office Action mailed December 9, 2008. Claims 1-18 were pending in this application. No claims have been amended herein. Claims 1-18 are currently pending. Reconsideration of the rejected claims is respectfully requested.

#### **I. Rejection under 35 USC § 103, Alaia**

Claims 1-6 were rejected under 35 U.S.C. §103(a) as being unpatentable over Alaia et al. (US Patent 6,199,050) (hereinafter “Alaia”). Applicants traverse the rejections.

Applicants submit that claim 1 is not rendered obvious by a combination of disclosures in Alaia.

For example, Applicants' claim 1 recites: In an electronic commerce exchange, an auction method for implementing automatic extension of an auction in response to bidding activity from auction participants, comprising:

- a) setting an end time for concluding an auction;
- b) receiving bids from remote bidders via a distributed computing network;
- c) measuring a number of bids received within a predetermined time of the auction end time;
- d) if the measured number of bids exceeds a threshold number of bids, extending the duration of the auction automatically and setting a new auction end time, wherein said threshold number of bids is at least one bid; and
- e) notifying auction participants of the new auction end time. (emphasis added).

As recited above, claim 1 specifically recites, “measuring a number of bids received within a predetermined time of the auction end time.” Applicants submit that at least these features recited in claim 1 are not disclosed or suggested by the combination of disclosures of Alaia.

The Office Action asserts that Alaia teaches “overtime triggers,” but does not disclose wherein the threshold number of bids is at least one bid. The Office Action also asserts that Alaia’s disclosure that “overtime was triggered if the price of the new bid submitted within the appropriate interval was lower than the current best bid,” suggests that the threshold number of bids is at least one bid. (Office Action, p. 3).

Alaia describes a method for conducting electronic auctions and for extending closing times of a lot within the auction. In particular, Alaia describes that

During the course of bidding, a bid submitted on Lot X can trigger an extension of Lot X's closing time (e.g. a new market bid submitted within a predetermined amount of time before the closing time). Thus, bids A and B do not change the bidding status of Lot X or the closing times of the lots, because they are not received within a trigger period before the scheduled closing time of Lot X (in this instance, the trigger period is one interval  $\Delta t$ ). However, bid C, which is a new low bid received within the time interval t5-t6 (within  $\Delta t$  of closing time t6), triggers "Overtime" for Lot X. This is reflected in FIG. 9B, which indicates that the bidding status of Lot X was "Open" before the bid and "Overtime" after the bid. The scheduled closing time for Lot X is extended by an Overtime interval (defined in this example to be one interval  $\Delta t$ ) from t6 to t7. (Alaia, col. 11, lines 50-65). (emphasis added).

The second aspect of flexible overtime is variable overtime triggers. The trigger for each lot is bid-related, in that it involves an evaluation of some attribute or attributes of a bid against one or more trigger criteria. In the prior system, the attribute of a bid that was evaluated was the price of the bid with respect to the current best (lowest priced) bid. Overtime was triggered if the price of a new bid submitted within the appropriate interval was lower than the current best bid. In the disclosed auction system, overtime triggers can be based on other parameters and criteria. For example, the rank of a bid can be considered, and overtime triggered based in part on whether the rank of the bid is lower than the established criterion. Thus, the criterion can be established that a trigger bid must be a bid that is a new best bid or is the second or third best bid. (Alaia, col. 13, lines 53-67). (emphasis added).

A further possible criterion, which can be applied in tandem with or independent of the ranking criterion, is that the bid must be sufficiently close to the best bid in terms of some parameter of quality. For the simplest bid evaluation, the parameter of quality for a bid is the bid price (e.g. in dollars). The criterion can be established that a trigger bid must have a price that is lower than, or higher than but within a predetermined absolute or percentage difference from, the current best bid. (Alaia, col. 14, lines 1-9). (emphasis added).

Applicants submit that Alaia fails to disclose or suggest "measuring a number of bids received within a predetermined time of the auction end time," as recited in claim 1. A This feature describes a predetermined time (e.g., the last 5 minutes of the auction), and in conjunction therewith, the number of bids (i.e., numerical count) received with that time. In other words, the numerical count of bids that were received within the predetermined time is measured. Alaia describes that when a new low bid is received within the time interval  $\Delta t$ , Overtime is triggered. At most, Alaia describes that the first bid which satisfies the criteria (i.e., received within the time interval, and qualifies as a low bid) triggers the auction to be extended into overtime. There is no mention or suggestion of counting the number of bids received within the time interval  $\Delta t$ . Even if there is only one bid, it is immaterial to Alaia to know how many

bids were received during the time period – as soon as a bid satisfies the criteria, the Overtime is triggered. There is no count that is being maintained.

Moreover, Alaia describes that various triggers can be used to extend the time of an auction. All of the triggers described by Alaia are based on the character/attributes of the individual bids, and is not based on the count of the number of bids received during the time interval  $\Delta t$ . In particular, Alaia describes the triggers as including price, rank of the bid based on price, and a parameter which measures the quality of the bid such as the price quality. (Alaia, col. 13, line 53- col. 14, line 9). As such, Alaia fails to disclose or suggest “measuring a number of bids received within a predetermined time of the auction end time,” as recited in claim 1.

In light of the above, Applicants submit that even if the disclosures of Alaia were combined as asserted in the Office Action (even though there appears to be no motivation for such a combination), the resultant combination fails to teach the various features of claim 1. Accordingly, Applicants submit that claim 1, and the dependent claims 2-7 and 13, are allowable over a combination of the disclosures of Alaia. Applicant submits that the dependent claims are patentable for additional reasons. It is therefore respectfully requested that the rejections with respect to these claims be withdrawn.

## II. Rejection under 35 USC § 103, Alaia in view of eBay

Claims 7 and 13 were rejected under 35 U.S.C. §103(a) as being unpatentable over Alaia in view of eBay Help Basics, Frequently Asked Questions on Bidding (hereinafter “eBay”). Claims 7 and 13 depend from independent claim 1, which is not rendered obvious by the disclosures of Alaia as discussed above. Accordingly, claims 7 and 13 are also not rendered obvious by the disclosures of Alaia for at least a similar rationale as discussed above for claim 1.

Applicants further submit that eBay does not make up for the deficiencies in the disclosures of Alaia with respect to these claims. eBay does not appear to teach anything about measuring the numerical count of bids received for a predetermined time. Accordingly, Applicants submit that even if the disclosures of Alaia and eBay were combined as suggested by the Office Action (even though there appears to be no motivation for the combination), the

resultant combination would not make obvious the features recited in claims 7 and 13.

Applicants thus submit that claims 7 and 13 are patentable over a combination of the disclosures of Alaia and eBay.

Claims 8-12, and 14 were rejected under 35 U.S.C. §103(a) as being unpatentable over Alaia and further in view of eBay Help Basics, Frequently Asked Questions on Bidding (hereinafter “eBay”). Applicants traverse the rejections.

Applicants submit that claim 8 is not rendered obvious by a combination of Alaia and eBay.

For example, Applicants' claim 8 recites: In an electronic commerce exchange, an auction method for implementing dynamic automatic extension of an auction in response to bidding activity from auction participants, said method comprising:

- a) setting a start time and an end time for an auction;
- b) receiving bids from remote bidders via a distributed computing network;
- c) setting a minimum bid difference at which a succeeding bid must differ from a preceding bid from the remote bidders;
- d) measuring a number of bids received within a predetermined time of the auction end time;
- e) if the measured number of bids exceeds a threshold number of bids, extending the duration of the auction automatically and setting a new auction end time, wherein said threshold number of bids is at least one bid; and
- f) notifying auction participants of the new auction end time. (emphasis added).

As recited above, claim 8 specifically recites, “measuring a number of bids received within a predetermined time of the auction end time.” As previously described, the disclosures of Alaia fail to teach or suggest “measuring a number of bids received within a predetermined time of the auction end time,” as recited in claim 1. For at least a similar rationale discussed above for independent claim 1, Applicants submit that Alaia does not disclose this feature.

Applicants further submit that eBay does not make up for the deficiencies in the disclosures of Alaia with respect to these claims. The Office Action relies on eBay for “setting a

minimum bid difference.” (Office Action, p. 7). Even if, for purposes of argument, eBay discloses what is asserted in the Office Action, eBay does not appear to teach anything about measuring the numerical count of bids received for a predetermined time. Accordingly, Applicants submit that even if the disclosures of Alaia and eBay were combined as suggested by the Office Action (even though there appears to be no motivation for the combination), the resultant combination would not make obvious the features recited in claim 8.

Thus, Applicants submit that claim 8, and dependent claims 9-12 and 14, are allowable over a combination of the disclosures of Alaia and eBay. Applicant submits that the dependent claims are patentable for additional reasons. It is therefore respectfully requested that the rejections with regard to these claims be withdrawn.

### III. Rejection under 35 USC § 103, Brett in view of Alaia

Claims 15-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Brett (US Patent 6,704,713) (hereinafter “Brett”) in view of Alaia. Applicants traverse the rejections.

Applicants submit that claim 15 is not rendered obvious by a combination of Brett and Alaia.

For example, Applicants' claim 15 recites: A method of automatically extending an auction, said method comprising:

setting an end time for concluding an auction;  
receiving bids from remote bidders via a distributed computing network;  
measuring a rate at which incoming bids are received;  
if the measured rate of incoming bids exceeds a predetermined threshold, automatically extending the duration of the auction and setting a new auction end time; and  
notifying auction participants of the new auction end time. (emphasis added).

As recited above, claim 15 specifically recites, “if the measured rate of incoming bids exceeds a predetermined threshold, automatically extending the duration of the auction and setting a new auction end time.” Applicants submit that at least these features recited in claim 15 are not disclosed or suggested by Brett, either alone or in combination with Alaia.

The Office Action asserts that Brett teaches extending the duration of the auction and setting a new auction time where the rate of bids exceeds a threshold, citing to Brett col. 13 lines 1-45. (Office Action, p. 8). The Office Action also asserts that the adjustable bidding window may be defined as an adjustable period of time. (Office Action, p. 13). Applicants respectfully disagree.

Brett describes an event ticket auction which receives and evaluates bids for seats within a venue for an event. (Brett, Abstract). In particular, Brett describes that

The bidding activity meter allows the system to have an adjustable bidding window based upon bidding activity. The adjustable bidding window may be defined as an adjustable period of time that maybe immediately terminated upon the bidding rate reaching a predefined low threshold. For example, the system may set up an auction for tickets to a particular event starting at 10 a.m. on a particular day. The auction may be set up to accept bids for at least five hours, until 3 p.m., but for no more than fourteen hours, until 12 p.m. Bidding will remain open after 3 p.m., so long as the bidding continues above the predetermined threshold (e.g., 1000 bids per hour). However, if the bidding drops below that threshold, the auction will be closed immediately. Thus, the auction will definitely accept bids from 10 a.m. until 3 p.m. If the total bidding from 3 p.m. to 4 p.m. exceeds the threshold rate, the bidding will remain open. However, if at any time before 12 p.m., the bidding rate drops below the threshold, the bidding will immediately cease. Thus, if the threshold is 1000 bids per hour and the total bidding during the hours of 9 p.m. and 10 p.m. drops to 900 bids, the auction will close, and no further bids will be taken. (Brett, col. 13, lines 10-30). (emphasis added).

Applicants submit that Brett fails to disclose or suggest “if the measured rate of incoming bids exceeds a predetermined threshold, automatically extending the duration of the auction and setting a new auction end time,” as recited in claim 15. In particular, Brett describes that the auction remains open after the time period at which it was set to close if the bidding continues above the threshold. (Brett, col. 19-21). Moreover, Brett describes that the auction continues to be open even after the closing time, and if the bidding rate falls below the threshold or the 12pm deadline as originally set is satisfied, the auction is closed immediately. (Brett, col. 21-22, 25-27). Although Brett mentions that the auction time period can be extended if the bidding meets a threshold, there is no mention or suggestion in Brett of extending the deadline and setting a new auction end time, as recited in claim 15. There is no need in Brett of setting a new auction end time because Brett only describes two conditions which can end the auction. First, the auction continues until the bidding threshold cannot be met, and second, the auction

continues until the 12pm end time as originally set (i.e., not extended) is satisfied. Neither of these conditions teach or suggest extending the auction and setting a new auction time.

Furthermore, Brett's description of the adjustable bidding window does not disclose or suggest "if the measured rate of incoming bids exceeds a predetermined threshold, automatically extending the duration of the auction and setting a new auction end time," as recited in claim 15. Brett describes that the bidding window represents the time period that may be terminated upon the bidding rate reaching a predefined low threshold. (Brett, col. 13, lines 12-15). It appears that the adjustable period of time, i.e., 3pm-12pm using Brett's example, is set at the outset of the auction. Thus, the bidding window is not an end time which is adjustable if the measured rate of incoming bids exceeds a predetermined threshold.

Applicants further submit that Alaia does not make up for the deficiencies in Brett with respect to these claims. Specifically, Alaia does not disclose or suggest extending the duration of the auction and setting a new auction end time, upon determining that the rate of bids exceeds a threshold. As previously discussed, Alaia describes a method for conducting electronic auctions and for extending closing times of a lot within the auction. Alaia makes no mention or suggestion of determining the rate at which bids are received. Likewise, Alaia does not disclose or suggest the trigger (i.e., "if the measured rate of incoming bids exceeds a predetermined threshold") causing the action (i.e., "automatically extending the duration of the auction and setting a new auction end time," as recited in claim 15).

In light of the above, Applicants submit that even if Brett and Alaia were combined as asserted in the Office Action (even though there appears to be no motivation for such a combination), the resultant combination fails to teach the various features of claim 1. Accordingly, Applicants submit that claim 15, and dependent claims 16-18, are allowable over a combination of Brett and Alaia. Applicant submits that the dependent claims are patentable for additional reasons. It is therefore respectfully requested that the rejections of the pending claims be withdrawn.

#### IV. Amendment to the Claims

Appl. No. 09/924,671  
Amdt. dated February 9, 2009  
Amendment under 37 CFR 1.116 Expedited Procedure  
Examining Group 3662

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Unless otherwise specified, amendments to the claims are made for purposes of clarity, and are not intended to alter the scope of the claims or limit any equivalents thereof. The amendments are supported by the specification and do not add new matter.



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### CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,

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